

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 219 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? : NO
No
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

KUTBUDDIN N KOTAWALA

Versus

HAVALI MASJID SAIYAD SULEMAN

Appearance:

MR KH BAXI for Petitioner
MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This is tenant's revision against the order of the Appellate Court dated 21.12.1989 rejecting the application of the revisionist for condonation of delay in filing the Appeal against the order passed by the trial

Court in H.R.P. Suit No.1755 of 1984.

2. Shri K.H.Baxi for the revisionist and Shri M.B.Gandhi for the respondent Nos. 1 & 2 have been heard.

3. Brief facts giving rise to this revision are as under :

H.R.P. Suit No.1755 of 1984 was filed by the respondents against the revisionist for recovery of possession, etc. and also for recovery of arrears of rent and mesne profits. The defendant appellant appeared in the trial Court and filed written statement. He was not depositing the arrears of rent with the Court. Thereafter the landlord moved an application under Section 11(4) of the Bombay Rent Act for direction to the revisionist tenant to deposit arrears of rent, etc. On 24.12.1985 the trial Court directed the revisionist to deposit the arrears of rent on or before 31.1.1986. This order was not complied with by the revisionist. As a consequence the landlord gave application for further direction under Section 11(4) of the Act. On 21.4.1986 the trial Court struck off the defence of the revisionist and precluded him from appearing in or defending the Suit, except with the leave of the Court. The revisionist did not apply for leave of the Court to defend. As such the case was listed for evidence. The plaintiffs' witnesses were examined on 13.7.1987. Thereafter the trial Court decreed the Suit on 16.7.1987. Decree for eviction, etc. was passed against the revisionist who was directed to vacate the premises on or before 30.9.1987. So far the premise has not been vacated. Thereafter the revisionist filed restoration application No. 1858 of 1987 with an application for condonation of delay presuming that it was an ex-parte decree which could be set aside under Order - 9, Rule : 13 C.P.C. The said application was dismissed on 19.8.1988 by the trial Court. Thereafter the landlord respondent moved an Execution Application and when the Bailiff went for delivery of possession he found that the premises was locked. Thereafter the revisionist filed Civil Appeal on 20.9.1989 and requested for staying the execution proceeding. Application for condonation of delay of 2 years, 2 months and 4 days in preferring the Appeal was also filed. Two grounds were taken for condonation of delay. One was that the revisionist was sick and the other was that because of riots in Ahmedabad city the revisionist could not prefer Civil Appeal in time. Shri Baxi pointed out that 3rd ground was also taken that behind the back of the revisionist the trial Court has changed the date of hearing, but this ground

seems not to have been pressed before the lower Appellate Court.

4. The lower Appellate Court found that there was no evidence of sickness of the revisionist. It further found that no doubt that communal riots commenced in the Ahmedabad city, but the riot subsided by July, 1986 and thereafter law and order situation was normal in the city of Ahmedabad. According to the Appellate Court when the Decree for possession was passed on 16.7.1987 there were no riots in Ahmedabad City. Consequently, application for condonation of delay was dismissed. It is, therefore, this revision.

5. Shri K.H.Baxi, learned Counsel for the revisionist has again pressed those two grounds and has also pressed third ground regarding change of date. From the order of the lower Appellate Court it appears that the grounds regarding change of date by the trial Court behind the back of the revisionist was not pressed because there is no mention of this ground in the impugned order. However, even if the said ground is considered at this stage in this revision it can safely be said that that ground can be a ground for allowing the Appeal and not for condonation of delay in filing the Appeal. Thus, only two grounds are left for consideration, namely, whether the revisionist was actually sick and whether on account of communal riots the revisionist was prevented from preferring the Appeal in time.

6. On the point of sickness of the revisionist the Court below has found that there was no evidence whatsoever to support the allegation of illness of the revisionist. The lower Appellate Court was therefore justified in holding that the ground of illness was not substantiated.

7. So far as the second ground is concerned the Appellate Court found that the communal riot subsided in July, 1986, whereas the decree of the trial Court was passed on 16.7.1987. The lower Appellate Court also observed that after 1986 there was normalcy in Ahmedabad City and law and order was restored completely. If this was the state of affairs then the ground of communal riots cannot be considered to be a ground for condonation of delay inasmuch as the decree was passed by the trial Court after the riots ended in Ahmedabad city. Thus, these two grounds were imaginary and could not be the grounds for condonation of delay in preferring the Appeal.

8. Shri Baxi has contended that it is not requested that the Appeal may be allowed rather opportunity of hearing of Appeal may be afforded. However, when no good and sufficient cause is made out for filing the Appeal late then the delay can not be condoned. No doubt liberal view is to be taken for condonation of delay, but in this case where delay in filing the Appeal is of 2 years, 2 months and 4 days and since the two grounds for condonation of delay were not found established by the lower Appellate Court nor by this Court the Application was rightly rejected. There is thus no merit in this revision which is hereby dismissed with no order as to costs.

9. Before parting with this Judgment it may be mentioned that on 5.3.1990 an order was passed by this Court in this very revision directing the revisionist to deposit arrears of rent within a period of one month and arrears of taxes within two months thereafter. Shri M.B.Gandhi, under instructions from his client, informs that the revisionist has not complied with this order for a period of more than a decade since 5.3.1990. As such no indulgence is required to be given to the revisionist in this revision.

sd/-

Date : June 16, 2000 (D. C. Srivastava, J.)

sas